RECENT IMPORTANT DECISIONS

ADVERSE POSSESSION—COLOR OF TITLE—DEED COLOR OF TITLE ALTHOUGH KNOWN NOT TO CONVEY TITLE.—In a suit for trespass the land which the plaintiff claimed to own was in part occupied by plaintiff's church building and the adjoining lot was used by the members of the church for hitching their horses and for picnics, etc. Both tracts had been so used by the plaintiff for twenty-five years or more. The land was conveyed by A to plaintiff, by deed recorded, describing the land purported to be conveyed. The defendant claimed that the deed did not operate as "color of title" because the plaintiff knew that the title was not in A and because the deed was executed after the church had taken possession of the land. *Held,* one justice dissenting, defendant liable, as the deed to plaintiff was sufficient to constitute "color of title." *Shutt et al.* v. *Methodist Episcopal Church* (Ky. 1920), 218 S. W. 1020.

In the absence of any express statutory requirement, it is not essential to the acquisition of title to land actually occupied by adverse possession that the possession should be held under "color of title." *Probst* v. *Mission Board Presb. Ch.,* 129 U. S. 182; *Pearson* v. *Adams,* 129 Ala. 157; *Horner* v. *Reuter,* 152 Ill. 106; *Crary* v. *Goodman, 22* N. Y. 170. However, the courts have often included this so-called requirement in the elements of adverse possession. *Ewing* v. *Burnet,* 11 Pet. 52. It seems, however, that this is due to a confusion of "claim of title" with "color of title," or to a reference to the sufficiency of evidence to show that the possession of the claimant was in fact adverse. 2 ENC. L. & P. 501. The mere term itself, adverse possession, implies that there must be a "claim of title" by the claimant, else the holding is not adverse. If this distinction be correct the statements of the courts requiring "color of title" seem to be nothing but dicta. However, it is undoubtedly the rule that one must claim under "color of title" in order to acquire property by constructive adverse possession. *Barr* v. *Gratz,* 4 Wheat. 224; *Tracy* v. *Norwich,* 39 Conn. 382; *Boynton* v. *Hodgdon,* 59 N. H. 247. But the court held, and rightly it seems, that in the principal case the adjoining lot was actually in the possession of the plaintiff as it was used during the statutory time for purposes of the church. Aside from this, however, the claim of defendant is not justifiable. A deed to confer "color of title" need not be valid. In fact, it cannot be valid, else a valid title will be passed. Color of title may be defined as that which in appearance is title, but which in reality is not title. *U. S.* v. *Casterlin,* 164 Fed. 437; *Miller* v. *Clark,* 56 Mich. 337; *Whitcomb* v. *Provost,* 102 Wis. 278. Whenever an instrument by apt words in form passes what purports to be a title it gives color of title. *Hall* v. *Law,* 102 U. S. 466; *Green* v. *Horn,* 112 N. Y. S. 993. However, an instrument creating an equitable interest does not confer color of title. *Faith* v. *Yocum,* 51 Ill. App. 620. There is a conflict of authority as to whether the claim must be based on a writing. Georgia, Indiana, Missouri, and North Carolina have held that a writing is not necessary, while Iowa, Mississippi,

BANKS AND BANKING—LIABILITY OF BANK COLLECTING COMMERCIAL PAPER FOR ACTS OF CORRESPONDENT.—The plaintiff deposited for collection, four drafts with bills of lading attached, in the Wisconsin National Bank, at Milwaukee. The same were forwarded to the defendant bank, correspondent in Ashtabula, Ohio, which bank held them without demanding payment from the drawee or making any report, until the corn deteriorated in value, and the consignee then refused to accept it. The plaintiff consignor sued the negligent correspondent bank. *Held,* that the receiving bank, alone, is liable to the plaintiff for all the negligence and default of correspondent banks, since it acts as an independent contractor in making collections and is liable for the negligence of its agents. Therefore, the defendant correspondent bank cannot be sued by the plaintiff. *Taylor & Bournique Co.* v. *National Bank of Ashtabula* (D. C., N. D. Ohio, E. D. 1919), 262 Fed. 168.

The conflict still remains in the law between the so-called "New York rule" and the "Massachusetts rule" as to the liability of the receiving collecting bank for the negligence and default of its correspondent in collecting out of town collections. Under the "New York rule," the bank with which the collections are deposited is liable for the negligence or default of any agents which it may select for the purpose of collecting such items. *Commercial Bank* v. *Union Bank,* 11 N. Y. 203; *National Revere Bank* v. *National Bank of Republic,* 172 N. Y. 102; *Martin* v. *Hibernia Bank,* 127 La. 301; *Simpson* v. *Waldby,* 63 Mich. 439; *Sagerton Hdw. Co.* v. *Gammer Co.* (Tex. Civ. App.), 166 S. W. 428; *Pickney* v. *Kanawha Valley Bank,* 68 W. Va. 254; *Hoover* v. *Wise,* 91 U. S. 308; *Exchange National Bank* v. *Third National Bank,* 112 U. S. 276. The "Massachusetts rule" holds that where a collecting bank uses due care in selecting competent and worthy agents, its duty is done, and such correspondent banks become the agents of the depositor. *Fabens* v. *Mercantile Bank,* 23 Pick. (Mass.) 330; *Lord* v. *Hingham National Bank,* 186 Mass. 161; *Brown* v. *People's Savings Bank,* 59 Fla. 163; *Stacy* v. *Dane County Savings Bank,* 12 Wis. 702. For a list of states and the rule which they follow, see 5 MICH. L. REV. 109; 52 L. R. A. (N. S.) 608; 7 C. J. 606-7. In the principal case a situation arose, such that the plaintiff contended that the Wisconsin law prevailed, since the draft was deposited for collection in Wisconsin, while the defendant claimed that the Ohio law prevailed, since the collection was to take place in Ohio. Inasmuch as Ohio follows the "New York rule," *Reeves* v. *State Bank,* 8 Oh. St. 466, and Wisconsin the "Massachusetts rule," *Stacy* v. *Dane County Bank, supra,* either of the parties was entitled to judgment if his contention was correct. However, the court held that being a question of general and not local or statute law, the case would be determined by reference to all the authorities, and not by the law of the place where the contract was made or where the contract was to be performed. *Swift* v. *Tyson,* 16 Pet. 1; *B. & O. Ry.* v. *Baugh,* 149 U. S. 368. Having determined that the general law would prevail, the case, since it was in the Federal courts, was determined by the rule laid down in the Supreme Court of the United States, which is the "New York rule." *Exchange National Bank* v. *Third National Bank, supra.* Inasmuch